
1992 Wis Eth Bd 26
LEGISLATORS;
LOBBYING AND LOBBYISTS – STANDARDS OF CONDUCT

The lobbying law is not an impediment to a business' continuing to pay an elected official a regular salary or wage even if the employer derives a portion of its income from the provision of professional services to a principal, as long as the business can clearly and convincingly demonstrate that (1) the official's level of compensation is unrelated to the employer's having one or more principals as clients; (2) the principal's purchase of services is unrelated to the official's hiring or continued employment; and (3) in the case of the official's provision of professional or technical services of a type customarily charged on an hourly or project basis, the official does not perform any work or services specifically for a principal. OEB 92-26

June 29, 1992

Facts

[1] This opinion is based upon these understandings:

- a. You are a legislator and a state public official.
- b. You have been offered a position at a public relations firm in Wisconsin.
- c. That firm has a wide client base that includes a number of clients that are lobbying principals.
- d. You would be chiefly employed in speech writing, training individuals to be spokespersons for their organizations, campaign consulting, and general marketing and media relations.
- e. Your education and training have chiefly focused on public policy and public relations.
- f. You would be employed as a part-time employee and be paid on an hourly basis.
- g. You indicate that employees of public relations firms generally are paid either on a commission basis, at an hourly rate, or on a salary basis.
- h. You indicate that payment on an hourly basis is the most common for part-time employees.

- i. You would be paid at a uniform hourly rate regardless of the client or actual service performed.

Question

[2] The Ethics Board understands your question to be:

What restrictions, if any, do Wisconsin's Ethics Code or lobbying law impose on your ability to accept employment with the public relations firm?

Discussion and Advice

[3] Wisconsin's lobbying law prohibits an organization that employs a lobbyist ("principal") from furnishing anything of pecuniary value to a legislator and prohibits the legislator from accepting anything of pecuniary value from a principal.¹ This prohibition includes compensation for employment.² In interpreting this prohibition as it applies to lobbyists and officials, the Attorney General has stated:

The question of whether a lobbyist who is furnishing something of pecuniary value to an official's employer, relative or corporation is actually furnishing the item or service to the state official will always be a question of fact. I agree . . . that the law not only prohibits a lobbyist from furnishing things of pecuniary value directly to an official, but also prohibits a lobbyist from furnishing those things indirectly if the official will receive

¹ §13.625(1)(b), (2), (3), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.

2. Transportation.

3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

(3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).

² 1992 Wis Eth Bd 03; 1992 Wis Eth Bd 05; 77 Op. Atty. Gen. 160 (1988).

something of pecuniary value from the transaction. Therefore, an official would not be in violation of the law if the official's employer did business with the lobbyist but the official's compensation from the company was totally unrelated to and not determined by the income derived from that business. On the other hand, if the lobbyist were purchasing products from a company which employed an official, knowing that the official's compensation from the company would be enhanced by the purchases, a violation of the law would occur.

OAG 9-92 (March 23, 1992).

[4] In your situation, you would not be receiving compensation directly from a principal. The question then is whether you would be receiving compensation from a principal indirectly. Clearly, compensation consisting of commissions derived from work for specific clients who are principals cannot be said to be "unrelated to and not determined by" your employer's retention by such principals. However, the lobbying law is not an impediment to a business' continuing to pay you a regular salary or wage even if the employer derives a portion of its income from the provision of professional services to a principal, as long as the business can clearly and convincingly demonstrate that (1) your level of compensation is unrelated to your employer's having one or more principals as clients; (2) the principal's purchase of services is unrelated to your hiring or continued employment; and (3) in the case of your provision of professional or technical services of a type customarily charged on an hourly or project basis, you do not perform any work or services specifically for a principal.

[5] In addition to the restrictions noted above, we also note that the Ethics Code for Public Officials and Employees prohibits you from using state time or resources in connection with your private employment and from accepting compensation for work on behalf of clients if acceptance of such compensation could reasonably be expected to influence your official judgement on issues of concern to those clients.³

³ §19.45(2) and (3), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

See, e.g., 9 Op. Eth. Bd. 45 (1987).